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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Ronald C. Goodman and
Spacecam Systems, Inc.

v.

Space Corporation

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Opposition No. 107,318
to application Serial No. 75/114,794
filed on June 6, 1996

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Jay R. Ziegler of Buchalter, Nemer, Fields & Younger for Ronald C. Goodman and Spacecam Systems, Inc.

Ian F. Burns of Ian F. Burns & Associates for Space Corporation

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Before Seeherman, Walters and Wendel, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Ronald C. Goodman and Spacecam Systems, Inc. (hereafter "Goodman," "Spacecam Systems" or "opposers") have opposed the application of Space Corporation to register SPACECAM as a trademark for "stereoscopic,

virtual reality products, namely, video cameras, computer port interface boards, device drivers for stereoscopic viewing devices, and data and computer software recorded on magnetic tape and compact disks for making and viewing stereoscopic presentations." As grounds for opposition, opposers allege that opposer Goodman has used, and has licensed for use by opposer Spacecam Systems which itself has used, continuously since 1989 the trade name and trademark SPACECAM in connection with photographic equipment, namely specially designed and mounted camera equipment used in photography and filming of motion pictures, television productions and commercials, and in connection with photography and filming of motion pictures, television productions and commercials; and that applicant's use of the mark SPACECAM for its identified goods is likely to cause confusion.

Applicant has denied the allegations in the notice of opposition.

The record includes the pleadings and the testimony deposition, with exhibits, of opposer Goodman. Applicant did not submit any evidence. Only opposers filed a brief. An oral hearing was not requested.

Opposer Goodman is the president of opposer Spacecam Systems, and the designer of the SpaceCam system.

Spacecam Systems was incorporated in 1989, and is licensed by Goodman to use the SPACECAM mark in connection with its business. Spacecam Systems has conducted business under the trade name SpaceCam Systems, Inc. since its incorporation. Spacecam Systems designs, builds and operates gyro-stabilized camera systems. They are used primarily in the feature film industry, but are also used in television commercials, documentaries and music videos. In addition, they are used for large format specialized productions for amusement park rides in which the seats of the viewing audience move in conjunction with what is shown on the screen to create a three-dimensional special environment.

Since 1990 opposers have used the mark SPACECAM[1] on a remotely controlled gyro-stabilized camera system. The purpose of the system is to provide steady images, so that it can, for example, film from vehicles such as helicopters. It includes a control console which allows the camera operator to steer, aim, focus and do the various other camera controls that one could do if the camera were mounted on a tripod. The film camera is equipped with a video camera which allows the display of

[1] Opposers' exhibits depict the mark as both SPACECAM and SpaceCam; we will refer to the mark as SPACECAM in our opinion.

the video image that the film camera will be capturing at the control console. The camera operator controls the steering, focusing, etc. through an image displayed on a monitor at the control console, which is a computer. The entire system is computer based.

Since 1990 opposers have offered various services under the SPACECAM mark, specifically providing personnel such as a cameraman, director of photography and camera technician assistant; assisting in organizing the logistical aspects of the filming; and renting of the camera system. These services are offered to all aspects of the film industry, including feature films, television productions, music videos and theme parks. In their first year of operation opposers worked on 16 feature films; they now provide their services on 45-60 films per year, and 60-90 television commercials.

Since 1990 opposers have advertised their camera system and related services through, inter alia, advertisements in trade publications such as “Film and Video,”; brochures distributed to film production companies, film directors, and the like; direct mailings; distribution of a video demo; telephone marketing campaign; and exhibits at trade shows. In addition, opposers get screen credit for 80% of the projects they

do, and this is major publicity because interested consumers will notice such credit. Opposers' advertising expenditures have risen from $31,000 in 1993 to $100,000 in 1997 (the year opposers' testimony was taken).

We do not have any information about applicant's product or activities.

Opposers have demonstrated their priority of use. The evidence shows that they have used the mark SPACECAM on their camera system and in connection with their services since 1990, well before the June 6, 1996 filing date of applicant's application which, in the absence of evidence of use, is the earliest date on which applicant may rely.

Turning to the issue of likelihood of confusion, in making such a determination we must consider all relevant factors as set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis under Section 2(d) of the Trademark Act, two of the most important considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

In this case, the marks of the parties are identical. This fact "weighs heavily against applicant." **In re Martin's Famous Pastry Shoppe, Inc.**, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). When the marks in question are identical, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." **In re Shell Oil Co.**, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). Thus, when marks are identical, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion. **In re Concordia International Forwarding Corp.**, 222 USPQ 355 (TTAB 1983).

With respect to the parties' goods and services, although opposers use the mark SPACECAM on their camera system, it is not clear that they actually sell their SPACECAM camera system. Certainly opposers have not provided any information regarding sales of the system. However, there is no question that the camera system bearing the mark is transported in interstate or foreign commerce and the SPACECAM mark is prominently placed on the camera equipment, including on the three foot sphere in which the system is housed, and some of the camera

bodies. Moreover, the central feature of opposers' services is the furnishing of the camera system, which is subject to several patents and proprietary software, and their services of operating the system are ancillary to the rental of the system itself.

Both opposers' camera system and applicant's identified virtual reality products, including video cameras and computer software for making stereoscopic presentations, are technical systems based on cameras and computer hardware and software. Both are used for film and/or video production. Opposers' camera system and services are even involved in one aspect of virtual environment production, in that they make films used in amusement park entertainments in which the audience experiences, rather than simply views, what is shown on the screen through a correlation between the movement of their seats and what is shown on the screen. Both parties' goods and/or services would be offered to the same class of consumers, e.g., film production companies. They would also, based on the goods as they are identified in applicant's application, be advertised in the same channels of trade, e.g., trade magazines and trade shows. In this connection, we note that since 1991 opposers have presented a booth at the annual Biz Expo

West, the largest trade show in the film industry, where virtually all products and services related to the film industry are promoted.

Although there are obvious differences in opposers' services and equipment and applicant's goods, goods and services need not be identical to support a finding of likelihood of confusion and, as indicated above, because the marks are identical, the degree of similarity required in this case is smaller. Here, opposers have shown sufficient similarity between opposers' services and, in particular, the equipment used in the performance of their services, and applicant's goods to support such a finding.

Based on this record, we find that SPACECAM is a strong mark in the film industry. There is no evidence of any third-party use of similar marks. Further, although opposers' advertising expenditures would be considered small if they were offering a consumer good, it is clear that opposers' services, including the equipment they supply, are directed to a specific industry, and that within that industry they have publicized their services and equipment through trade ads, trade shows and on-screen credits.

As a result, the relevant consumers, knowing of opposers' SPACECAM camera system with its technological features, upon seeing the identical mark SPACECAM for virtual reality cameras and ancillary products, are likely to believe that opposers have turned their technical expertise to this area. In saying this, we recognize that the consumers of both parties' goods and services are sophisticated purchasers. However, given the fact that the marks are identical, we find that even these discriminating purchasers are likely to be deceived.

Finally, we acknowledge that, given the differences in the goods, the question of likelihood of confusion is not free from doubt. However, it is a well-established principle of trademark law that such doubts must be resolved against the newcomer and in favor of the prior user. See **San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.**, 565 F.2d 683, 196 USPQ 1 (CCPA 1977).

Decision: The opposition is sustained.